

Title	<b>Memorandum of Points and Authorities; and Applications, Motions, and Petitions Not Requiring Memorandums</b> (amend Cal. Rules of Court, rule 313; adopt rule 314)
Summary	Rule 313 of the California Rules of Court would be amended to improve its style and to refer to new rule 314. Rule 314 would be adopted prescribing which applications, motions, and petitions do not require a supporting memorandum.
Source	Civil and Small Claims Advisory Committee
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Discussion	<p>Rule 313 of the California Rules of Court would benefit from stylistical improvements and the addition of a cross-reference to new rule 314. Some subheadings would be added to break up the existing text. The statement that motions for a new trial are an exception would be deleted because rule 236.5 requires a memorandum for such motions. Separate headings would be provided for new subdivisions (e) (applications to file longer memorandums) and (h) (copies of non-California authorities). The term “must” would replace “shall” throughout the rule.</p> <p>Comments are invited on whether new subdivision (h) on non-California authorities and subdivision (i) on attaching papers to the notice of motion should be modified or eliminated.</p> <p>New rule 314 would recognize that certain papers generally filed on Judicial Council forms do not require supporting memorandums. The new rule would indicate that particular applications, motions, and petitions—such as the motion to be relieved as counsel adopted a few years ago—do not require supporting memorandums.</p>
	Attachments

## PROPOSAL

Rule 313 of the California Rules of Court would be amended and rule 314 would be adopted, effective January 1, 2004, to read:

### 1 Rule 313. Memorandum of points and authorities

- 2
- 3 (a) **[~~Notice of~~ Memorandum in support of motion and or demurrer—**  
4 **memorandum of points and authorities]** A party filing a demurrer or  
5 a notice of motion, except for a new trial motion listed in rule 314, shall  
6 must serve and file therewith a memorandum of points and authorities ~~to~~  
7 ~~be relied upon in support.~~ The court may construe the absence of the a  
8 memorandum may be construed by the court as an admission that the  
9 motion or ~~special~~ demurrer is not meritorious and as cause for its denial  
10 and, in the case of a demurrer, as a waiver of all grounds not supported.  
11
- 12 (b) **[Contents of memorandum]** ~~A~~ The memorandum ~~of points and~~  
13 ~~authorities shall~~ must contain a statement of facts, a concise statement  
14 of the law, evidence and arguments relied on, and a discussion of the  
15 statutes, cases, and textbooks cited in support of the position advanced.  
16
- 17 (c) **[Case citation format]** A case citation ~~shall~~ must include the official  
18 report volume and page number and year of decision. No other citations  
19 ~~shall be~~ are required.  
20
- 21 (d) **[Length of memorandum; requirements for lengthy memorandum]**  
22 Except in a motion for summary judgment or summary adjudication  
23 ~~motion or a motion to certify a class~~, no opening or responding  
24 memorandum ~~of points and authorities shall~~ may exceed 15 pages. In a  
25 motion for summary judgment or summary adjudication ~~motion or for~~  
26 class certification, no opening or responding memorandum ~~of points and~~  
27 ~~authorities shall~~ may exceed 20 pages. No reply or closing  
28 memorandum ~~of points and authorities shall~~ may exceed 10 pages. The  
29 page limit ~~shall not take into account~~ does not include exhibits,  
30 declarations, attachments, a table of contents, a table of authorities, or  
31 the proof of service.  
32
- 33 (e) **[Application to file longer memorandum]** A party may apply to the  
34 court for permission to file a longer memorandum. The application may  
35 be made ex parte, but with written notice of the application to ~~the~~ all  
36 other parties, at least 24 hours before the memorandum is due, ~~for~~  
37 ~~permission to file a longer memorandum.~~ The application shall must  
38 state reasons why the argument cannot be made within the stated limit.

1 A memorandum ~~of points and authorities~~ that exceeds 10 pages ~~shall~~  
2 must include a table of contents and table of authorities. A  
3 memorandum ~~of points and authorities~~ that exceeds 15 pages ~~shall~~ must  
4 also include an opening summary of argument. A memorandum that  
5 exceeds the page limits of these rules ~~shall~~ must be filed and considered  
6 in the same manner as a late-filed paper.  
7

8 **(e)(f)** **[Pagination of memorandum]** Notwithstanding any other rule, the  
9 pagination of a memorandum ~~of points and authorities~~ that includes a  
10 table of contents and a table of authorities ~~shall be~~ is governed by this  
11 rule. ~~In the case of such a memorandum,~~ The caption page or pages  
12 ~~shall~~ must not be numbered; the pages of the tables ~~shall~~ must be  
13 numbered consecutively using lower case Roman numerals starting on  
14 the first page of the tables; and the pages of the text ~~shall~~ must be  
15 numbered consecutively using Arabic numerals starting on the first page  
16 of the text.  
17

18 **(f)(g)** **[Use of *California Style Manual*]** The style used in a memorandum ~~of~~  
19 ~~points and authorities~~ ~~shall~~ must be that ~~set forth~~ stated in the *California*  
20 *Style Manual*; or ~~that set forth~~ in the most recent edition of the *Uniform*  
21 *System of Citation*, at the option of the party filing the document. The  
22 same style ~~shall~~ must be used consistently throughout the memorandum.  
23

24 **(h)** **[Copies of non-California authorities]** If any authority other than  
25 California cases, statutes, constitutional provisions, or state or local  
26 rules is cited, a copy of the authority ~~shall~~ must be attached to the papers  
27 in which the authorities ~~are~~ is cited and tabbed as an exhibits as  
28 required by rule 311(e). If a California case is cited before the time it is  
29 published in the Advance Sheets of the Official Reports, a copy of that  
30 case ~~shall~~ must also be attached and be tabbed as required by rule  
31 311(e).  
32

33 **(g)(i)** **[Attachments]** To the extent practicable, all supporting memoranda ~~of~~  
34 ~~points and authorities~~, declarations, and affidavits ~~shall~~ must be attached  
35 to the notice of motion.  
36

37 **(h)(j)** **[Exhibit references]** All references to exhibits or declarations in  
38 supporting or opposing papers ~~shall~~ must reference the number or letter  
39 of the exhibit, the specific page, and, if applicable, the paragraph or line  
40 number.  
41

1        ~~⊕~~(k) [Requests for judicial notice] Any request for judicial notice ~~shall~~  
2        must be made in a separate document listing the specific items for  
3        which notice is requested and ~~shall~~ must comply with rule 323(c).  
4

5        ~~⊕~~(l) [Proposed orders or judgments] If a proposed order or judgment is  
6        submitted, it ~~shall~~ must be lodged and served with the moving papers  
7        but ~~shall~~ must not be attached to them.  
8

9        **Rule 314. Applications, motions, and petitions not requiring a supporting**  
10       **memorandum**

11  
12        (a) [Memorandum not required] When filed on Judicial Council forms,  
13        the following civil applications, motions, and petitions do not require a  
14        supporting memorandum of points and authorities:  
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16            (1) Application for appointment of a guardian ad litem in a civil case;

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18            (2) Application for an order extending time to serve a pleading;

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20            (3) Motion to be relieved as counsel;

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22            (4) Motion filed in a small claims case;

23  
24            (5) Petition for change of name or gender;

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26            (6) Petition for a declaration of the emancipation of a minor;

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28            (7) Petition for an injunction prohibiting harassment;

29  
30            (8) Petition for a protective order to prevent elder or dependent adult  
31            abuse;

32  
33            (9) Petition of an employer for an injunction prohibiting workplace  
34            violence;

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36            (10) Petition for an order prohibiting abuse (transitional housing);

37  
38            (11) Petition to approve the compromise of the claim of a minor or an  
39            incompetent person; and

40  
41            (12) Petition for the withdrawal of funds from a blocked account.  
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1       **(b) [Submission of a memorandum]** Notwithstanding (a), if it would  
2       further the interests of justice, a party may submit, or the court may  
3       order the submission of, a memorandum in support of any motion,  
4       application, or petition. The memorandum must comply with rule 313.